

Court of Appeals, State of Michigan

ORDER

Morgan T. Fisher v Jordi Llore Justribo

Docket No. 309078

LC No. 2009-008198-DM

William B. Murphy, C.J.
Presiding Judge

Joel P. Hoekstra

Mark T. Boonstra
Judges

The motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the January 30, 2012 order granting attorney fees and costs is VACATED. The trial court abused its discretion in awarding attorney fees without requiring defendant to first establish that defendant is "unable to bear the expense of the action, and that the other party is able to pay." MCR 3.206(C)(2)(a); *Smith v Smith*, 278 Mich App 198; 748 NW2d 258 (2008), lv den 482 Mich 1053 (2008). This matter is REMANDED to the trial court for the purpose of reevaluating defendant's motion after a hearing at which defendant will be provided the opportunity to satisfy MCR 3.206(C)(2). This order has immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAY 24 2012

Date


Chief Clerk